

Title: Limitations on Claims
Date: March 2019
SOP No.: 15
Issued by the Office of Planning and Environment (TPE)

### **1. Purpose**

This document provides guidance on publishing a statute of limitations notification in the *Federal Register*, known as a Limitation on Claims (LOC) notice, announcing that FTA has taken a final agency action on a project, thereby limiting legal claims against that project.

### **2. Applicability/Scope**

This guidance applies to the processing of an LOC notice for an FTA environmental decision, such as a final environmental impact statement/record of decision (FEIS/ROD), finding of no significant impact (FONSI), categorical exclusion (CE) determination, or a re-evaluation.

### **3. Responsibilities**

Regional staff is responsible for notifying FTA's Office of Environmental Programs (TPE-30) of any environmental decision appropriate for inclusion in an LOC notice and providing detailed information on the decision for inclusion in the notice. TPE-30 will then consult with the Office of Chief Counsel (TCC), as needed, in determining which decisions to include in the notice.

TPE-30's Office Director and TCC will review and approve the notice. In addition, TPE-30 will notify FTA's Office of Congressional Affairs of the notice, if necessary. TPE's Associate Administrator, or designee, has final approval and signature authority for the notice.

### **4. Standard Procedures**

**4.1. Authority for Limitations on Claims notices.** Section 139(l) of title 23 of the U.S. Code provides that "a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 150 days after publication of a notice in the *Federal Register* announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval." If no notice is published in the *Federal Register*, then the applicable statutory period for filing claims applies (i.e., usually six years).

**4.2. Identifying decision documents for the notice.** Regional staff should submit all decision documents to TPE-30 to include in a notice, including combined FEIS/RODs, RODs, amended RODs, FONSI, amended FONSI, potentially controversial CEs, and potentially controversial re-evaluations. The Region should ensure that the decision document clearly identifies the final agency actions (e.g., findings for Section 4(f), Section 106, and air quality conformity).

Any decision document that the Region expects may be challenged through litigation should be submitted for inclusion in the notice. The Region should provide some basic background project information to TPE-30 to help in its review and approval process of the notice. If a project has faced a large amount of litigation already, it is often prudent to publish an LOC notice even for what may be viewed as a non-controversial re-evaluation of that project.

For intermodal projects, FTA will typically publish an LOC notice separate from its partner agency (e.g., FHWA) if FTA issues a separate decision document for the project. A single, joint notice may be appropriate in situations where agencies issue a joint decision document. Additionally, FTA may publish an LOC notice on behalf of another Federal agency when that Federal agency's final agency action is related to the FTA proposed action. Early coordination with TPE-30 is necessary in these situations.

**4.3. Content for Limitations on Claims notice.** An LOC notice should include the transit project name, a brief description of the project, and the findings and determinations made by the Regional Administrator, or designee, including Section 4(f) determinations, Section 106 findings, air quality conformity determinations, and the name of the supporting environmental documentation for these findings and determinations.

**4.4. Section 508 compliance.** FTA is required to comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d) for all electronic documents it posts on its website, making that information accessible to people with disabilities. Therefore, Regional staff must either:

- Ensure that the environmental decision document that the Regional Office sends to TPE-30 is posted on the project sponsor's website, TPE-30 has a link to that website, and Regional staff have requested that the project sponsor retain its web-posting until the project is in operation (FTA's recommended option); or
- Send a Section 508-compliant electronic copy of the environmental decision document to TPE-30 for posting on FTA's public website. Documents should include appendices such as a mitigation table or Section 106 Memorandum of Agreement (all must be 508-compliant).

**4.5. Approval and publication process.** Prior to publication, an LOC notice is reviewed and approved by TPE-30's Office Director, TCC, and TPE's Associate Administrator. TPE's Associate Administrator has signature authority for the notice, but that authority may be delegated. TCC staff responsible for submitting *Federal Register* notices then submits the notice for publication to the Office of the Federal Register.

- TPE-30 will provide the Regional Office with the official *Federal Register* notice.
- TPE-30 maintains a list of environmental decision documents on FTA's public website. A project remains on this web listing until it is in operation.

## 5. References

- Efficient environmental reviews for project decisionmaking, [23 U.S.C. § 139\(l\)\(1\) and \(2\)](#)
- [Section 508 Law and Related Policies](#) (see also [29 U.S.C. § 794d](#))

APPROVAL:

A handwritten signature in black ink, appearing to read 'Megan W. Blum', written over a horizontal line.

Megan W. Blum  
Director, Office of Environmental Programs

DATE:

3/29/2019